

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

FILED

MAR 21 2011

CLERK, U.S. DISTRICT COURT
NORFOLK, VA

ACTIVEVIDEO NETWORKS, INC.,

Plaintiff,

v.

CIVIL ACTION NO. 2:10cv248

**VERIZON COMMUNICATIONS, INC.,
VERIZON SERVICES CORP.,
VERIZON VIRGINIA INC., and
VERIZON SOUTH INC.**

Defendants.

ORDER

Before the Court is Defendants', Verizon Communications Inc., Verizon Services Corp., Verizon Virginia Inc., and Verizon South Inc. (collectively, "Verizon"), Motion for Summary Judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. Having carefully reviewed the Parties' pleadings, the Court finds this matter ripe for judicial determination.

The Court finds that there is a genuine issue of material fact precluding a finding of summary judgment. Verizon asserts that a release provision and covenant not to sue contained in a prior Integration Agreement entered into by ActiveVideo Networks, Inc. ("ActiveVideo") and I Holdings, Inc./TV Guide ("TVG") precludes ActiveVideo from asserting any claims for patent infringement against Verizon. ActiveVideo argues that the Integration Agreement, and all provisions therein, never became enforceable because TVG failed to execute a condition precedent to the Agreement. In supporting a motion for summary judgment, the moving party has the burden of showing that there is an absence of evidence to support the non-moving party's case or that there is no genuine dispute as to a material fact, and Verizon has not met that burden.

Accordingly, Verizon's Motion for Summary Judgment is **DENIED**.

The Court **DIRECTS** the Clerk to send a copy of this Order to counsel for the parties.

IT IS SO ORDERED.



Raymond A. Jackson
United States District Judge

Norfolk, Virginia

March 21, 2011